CHAPTER 12-000 THIRD PARTY LIABILITY AND CHILD SUPPORT ENFORCEMENT

12-001 ASSIGNMENT (GENERAL): As a condition of receiving Medicaid, a recipient of services must assign his/her right to any medical support to the state, to reimburse the state for assistance dollars expended. Application for and acceptance of assistance constitutes an assignment by operation of law.

12-002 THIRD PARTY MEDICAL PAYMENTS

12-002.01 Third Party Medical Payments: The application for assistance constitutes an automatic assignment to the Department of the client's rights to third party medical payments. This assignment includes the rights of the client as well as the rights of any other member of the unit for whom the client may legally make an assignment. As a requirement for assistance the client must cooperate (unless s/he has good cause for noncooperation) in securing any third party medical payments. This includes payments from:

1. The client's own medical coverage for any member of the unit, e.g., the client's health insurance; and
2. An individual not in the unit who has medical coverage for any member of the unit, e.g., health insurance of an absent parent or another individual which covers a child in the unit.

This assignment gives the Department the right to pursue and receive payments from any third party liable to pay for the cost of medical care and services of the client or any other unit member and which otherwise would be covered by Medicaid. The assignment of the rights to third party medical payments is effective with the date of eligibility for assistance.

For Medicaid cases with a Share of Cost, the assignment becomes effective the first day of the month when the case status changes to 450, "Share of Cost Met."

Note: No sanction is taken if a client who is receiving Transitional Medical Assistance does not cooperate in obtaining third party medical payments.

For third party payments received directly see Appendix 477-000-015.

12-002.02 Third Party Payments Not Assigned: The following third party payments are not subject to the automatic assignment provision:

1. Medicare benefits; and
2. Payments from income-producing policies which subsidize the client's income while s/he is hospitalized or receiving care, regardless of the type of medical service being provided.

12-002.03 Cooperation in Obtaining Third Party Payments: As a condition of eligibility for medical assistance, the client must cooperate in obtaining third party payments unless s/he has good cause for noncooperation. Cooperation includes any or all of the following:

1. Providing complete information regarding the extent of third party coverage which s/he or any other unit member has or may have. This includes coverage provided by a person not in the unit or by an agency;
2. Providing any additional information or signing claim forms which may be necessary for identification and collection of potential third party payments;
3. Appearing as a witness in a court or another proceeding, if necessary;
4. Notifying the Department of any action s/he is initiating to recover money from a liable third party for medical care or services. This includes the identity of the third party as well as the entire amount of any settlement, court award, or judgment;
5. Reimbursing the Department or paying to the provider any payments received directly from a third party for any services payable by Medicaid; and
6. Taking any other reasonable steps to secure medical support payments.

12-002.04 Refusal to Cooperate: Noncooperation by the client is determined based on the client's failure or refusal to fulfill the requirements listed (see 477 NAC 12-002.03).

12-003 OPPORTUNITY TO CLAIM GOOD CAUSE

12-003.01 Notification of Right: The client must be notified of the right to claim good cause for noncooperation at intake, renewal, and whenever cooperation becomes an issue. The client must be given a verbal explanation of good cause and the opportunity to ask questions. A written explanation of good cause is included in the Application for Assistance.

12-003.02 Department Responsibilities if Good Cause Claimed: If the client claims good cause:

1. Explain that the client has the burden of establishing the existence of a good cause circumstance; and
2. Obtain a signed statement from the client listing the reason(s) for claiming good cause. The client is allowed 20 days to present evidence of the claim.

12-003.03 Acceptable Circumstances for Good Cause: Good cause claims must be substantiated by signed statements. When documentary evidence is not available the client shall furnish sufficient information as to the location of the information. To establish good cause, the evidence must show that cooperation would not be in the best interest of the client or another unit member for whom assignment is sought. Good cause includes the following circumstances, provided proper evidence is obtained.

12-003.04 Physical or Emotional Harm: Good cause exists if the client's cooperation in assigning benefits is reasonably anticipated to result in physical or emotional harm to the client or another unit member. Emotional harm must only be based upon a demonstration of an emotional impairment that substantially reduces the individual's functioning.

12-003.05 Documentary Evidence: Documentary evidence which indicates these circumstances includes:

1. Medical records which document emotional health history and present emotional health status of the client or other unit member;
2. Written statements from a mental health professional indicating the diagnosis or prognosis concerning the emotional health of the client or other unit member;
3. Court, medical, criminal, protective services, social services, psychological, or law enforcement records which indicate that the third party might inflict serious physical or emotional harm on the child or parent/needy caretaker relative; or
4. Signed statements from individuals other than the client with knowledge of the circumstances which provide the basis for the claim.

12-003.06 Evidence Not Submitted by Client: When the claim is based on the client's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

1. Investigate the good cause claim when s/he believes that the claim is credible without corroborative evidence and corroborative evidence is not available; and
2. Find good cause if the client's statement and the investigation indicate that the client has good cause for refusing to cooperate

12-003.07 Department Considerations: If the determination of good cause is not substantiated by documentary evidence, the following evidence must be considered:

1. The present physical or mental state of the client;
2. The physical or mental health history of the client;
3. Intensity and probable duration of the physical or mental upset; and
4. The degree of cooperation required by the client.

12-003.08 Decision on Good Cause: Good cause shall be determined and the client must be notified of the decision on a Notice of Action. If it is determined that good cause does not exist, the client is allowed ten days to respond from the date that the Notice of Action was mailed. If the client does not cooperate, withdraw the application, or request the case closed, a sanction is imposed (for Sanction for Refusal to Cooperate see 477 NAC 12-004).

12-003.09 Delay of Assistance Pending Determination: The agency must not deny, delay, or discontinue assistance pending a determination of good cause if the client has complied with the requirements of providing acceptable evidence or other necessary information. In most instances, a good cause determination must be made within 30 days following the receipt of a claim.

12-003.10 Review of Good Cause: At the time of each redetermination, a good cause claim must be reviewed based on a circumstance that is subject to change. If circumstances remain the same, no action is required. A new determination is necessary if circumstances have changed. If good cause no longer exists, the requirement to cooperate must be enforced.

12-004 SANCTION FOR REFUSAL TO COOPERATE: If the client fails or refuses to cooperate and there is no good cause claim or determination, the appropriate sanction is applied. If the reason for noncooperation is the client's failure or refusal to provide information about or obtain third party medical payments (for Third Party Medical Payments see 477 NAC 12-002), the client is ineligible for Medicaid. Eligibility of the dependent child(ren) is not affected. Ineligibility continues for the client until s/he cooperates or cooperation is no longer an issue.

12-005 CHILDREN'S ELIGIBILITY IF PARENT DOES NOT COOPERATE: If a parent who is applying for medical assistance for his/her child(ren) fails or refuses to cooperate with TPL, eligibility of the child(ren) is not affected.

12-006 THIRD PARTY PAYMENTS RECEIVED DIRECTLY: If the client receives a third party medical payment directly and the medical expense for which the third party medical payment is intended is payable by Medicaid, the payment is considered unearned income for non-MAGI based categories unless reimbursed by the client. If the insurance payment exceeds Medicaid rates, the excess is considered unearned income for non-MAGI based categories unless paid out on other medical services or supplies. Regardless of the existence of a good cause claim, any third party medical payment that is received directly by the client must be reimbursed.

12-007 RECOUPMENT OF THIRD PARTY MEDICAL PAYMENTS:

1. Send a demand letter advising the client that s/he must reimburse the Department or the provider. The client is allowed ten days from the date of notification to reimburse the medical payment. For an applicant, the Department must not delay determination of eligibility for assistance and authorization for payment pending the applicant's reimbursement. At the time the application is approved, the client must be notified of the number of days left in which to reimburse the payment;
2. If the client refunds within the ten days, take no further action; or
3. If the client fails or refuses to refund within the ten days, consider the entire third party payment as unearned income in the first month possible, taking into account adequate and timely notice. Any balance remaining is considered a resource in the following month.

Regardless of the existence of a good cause claim, any third party medical payment that is received directly by the client must be reimbursed.

12-008 WILLFULLY WITHHELD INFORMATION: When the evidence clearly establishes that a client willfully withheld information regarding a third party medical payment which resulted in an overpayment of Medicaid expenditures, the case must be referred to the Special Investigation Unit.
Once a case has been referred to the Special Investigation Unit, no action shall be taken with regard to the prosecution of the suspected fraud except in accordance with instructions or approval by the Special Investigation Unit. However, normal case actions must be completed which include applying the appropriate sanction in this section.

12-009 TERMINATION OF ASSIGNMENT: When a client is removed from the medical unit, the assignment provision is terminated. The client’s rights to any further third party and medical support payments are automatically restored effective with the date of ineligibility. However, the assignment remains in effect for the time period during which the client was on medical assistance.

12-010 HEALTH INSURANCE

12-010.01 Cooperation in Obtaining Health Insurance: A client has the option to enroll in an available health plan if the Department has determined that it is cost effective and the client is able to enroll on his/her own behalf. The Department then pays the premiums, deductibles, coinsurance, and other cost sharing obligations. See Appendix 477-000-016.

12-011 COOPERATION WITH CHILD SUPPORT ENFORCEMENT UNIT (CSEU): Child Support Enforcement Services are provided to a child age 18 or younger who has a noncustodial parent(s). See Appendix 477-000-005.

Exceptions: CSE services are not provided for:

1. An unborn child;
2. A child who is receiving Home and Community Based Services in the home of both parents; or
3. An emancipated minor.

12-012 DUTIES OF THE CLIENT: The parent/needy caretaker relative, relative payee, guardian, conservator, or the minor parent of the child for whom aid is claimed is required to cooperate with Child Support Enforcement (unless good cause for refusing to do so is determined).

12-013 OPPORTUNITY TO CLAIM GOOD CAUSE

12-013.01 Notification of Right: The client must be notified at intake and whenever cooperation becomes an issue of the right to claim good cause as an exception to the cooperation requirement. The client must be given:

1. A verbal explanation of good cause for child/spousal support and third party medical support; and
2. The opportunity to ask questions.

12-013.02 Good Cause Claimed: If the client claims good cause, the Department must:

1. Explain that the client has the burden of establishing the existence of a good cause circumstance;
2. Have the client make a signed statement listing the reason(s) for claiming good cause on Form IM-5. The client has 20 days to present evidence of this claim;
3. Have the client provide the name and address of the noncustodial parent and forward this information to the Child Support Enforcement Unit;
4. Have the client provide child/spousal support information and forward this information to the Child Support Enforcement Unit; and
5. Notify the IV-D unit that a good cause claim is pending when the CSE referral is made.

12-013.03 Delay of Assistance Pending Determination: The agency may not deny, delay, or discontinue assistance pending a determination of good cause as an exception to the cooperation requirement if the client has complied with the requirements of providing acceptable evidence or other necessary information.

In most instances, a good cause determination must be made within 30 days following the receipt of a claim.

12-014 SANCTIONS FOR REFUSAL TO COOPERATE: Upon receiving notification from Child Support Enforcement that the individual refused to cooperate, the individual's needs must be removed from the medical unit.

Note: If the individual is age 18 or younger, medical assistance cannot be closed until the end of his/her initial six months of continuous eligibility. If the minor parent is in the unit of his/her parent, the minor's parent is responsible for cooperating in obtaining support for the minor's child. The payee is sanctioned if s/he or the minor does not cooperate. There is no sanction for non-cooperation of a relative payee or guardian or conservator payee or pregnant women.

12-015 OTHER RELATED ELIGIBILITY REQUIREMENTS

12-015.01 Sanction for Non-cooperation with Quality Control: A client (or an individual applying on behalf of the client) must cooperate with state and federal quality control as a condition of eligibility. If a client fails to cooperate, the whole unit is ineligible for one month only.

Note: This requirement does not apply to a child who is receiving a year of medical eligibility following birth or a child, including a 599 CHIP unborn, in six months continuous eligibility.

12-015.02 Receipt of Other Assistance: An individual who receives Medicaid may not at the same time receive a payment of another type of categorical assistance administered by the Department. This does not preclude a Medicaid client from being the payee for a grant made on behalf of a child in the individual’s care. Assistance from a source other than the Department may be used to supplement but not duplicate assistance for a particular need.